## IN THE UNITED STATES DISTRICT COURT

# FOR THE EASTERN DISTRICT OF VIRGINIA

# 29:77

#### Alexandria Division

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Crim. No. 01-455-A
	)	
ZACARIAS MOUSSAOUI	)	

## EMERGENCY APPLICATION FOR WRIT AD TESTIFICANDUM

COMES NOW the defendant, Zacarias Moussaoui, and respectfully requests that this

Court issue a *Writ Ad Testificandum* to John Clark, the United States Marshal for the Eastern

District of Virginia, to produce Jean Tony Antoine Oulai, who is currently in Mr. Clark's

custody, for the purpose of giving testimony in this case by deposition pursuant to 18 U.S.C. §

3503. The time and place for the deposition is set forth in the attached Notice of Deposition or it

may be taken at such other time and place as the Court may direct. We also request, pursuant to

18 U.S.C. § 3503, that the government be directed to produce any property in its possession,

custody or control that was seized or taken by the government from Mr. Oulai.

As grounds for this request, the accused hereby states on information and belief, that Mr. Oulai has material information concerning the events of September 11, 2001 which may be exculpatory to the defendant. As counsel for the accused, we have an ethical and constitutional obligation to investigate. *See U.S. v. McVeigh*, 918 F. Supp. 1452, 1459 (W.D. Okla. 1996). Further, on information and belief, Mr. Oulai is currently being held by the United States on a material witness warrant because the United States and a United States District Court already have determined that it is it is impracticable to secure Mr. Oulai's presence by subpoena. Finally, on information and belief, Mr. Oulai's release from custody may be imminent. It is



important to obtain the relief requested before he is released, hopefully without extending his detention.

18 U.S.C. §3144, the material witness statute, specifically contemplates delaying release of a material witness until his deposition be taken. Nothing in § 3144 suggests that it is intended to provide a secret storehouse of witnesses with material testimony about a matter for the government's exclusive benefit. We respectfully request the opportunity to depose this witness before he is released from custody and becomes essentially unavailable to the defense. We further request that this be scheduled promptly so as not to unnecessarily extend Mr. Oulai's detention.

Respectfully submitted,

Frank W. Dunham, Jr.
Federal Public Defender
Eastern District of Virginia
401 Courthouse Square

Suite 300

Alexandria, VA 22314

(703) 299-3320

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Application for Writ Ad Testificandum and Notice of Deposition have been served via facsimile and first class mail this 28th day of January, 2002 upon AUSA Robert A. Spencer, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, VA 22314 and upon Drew Hutchinson, Esquire, counsel for Jean Tony Antoine Oulai, 627 South Washington Street, Alexandria, VA 22314.

Frank W. Dunham, Jr

### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Notice of Deposition has been served via facsimile and first class mail this 28th day of January, 2002 upon AUSA Robert A. Spencer, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, VA 22314 and upon Drew Hutchinson, Esquire, counsel for Jean Tony Antoine Oulai, 627 South Washington Street, Alexandria, VA 22314.

Frank W. Dunham, Jr.